Comments by
The Coalition For Employment Through Exports (CEE) and
The National Foreign Trade Council (NFTC)
on Proposed Revisions to the Economic Impact Procedures
of the Export-Import Bank
October 10, 2002

The CEE and NFTC memberships comprise major U.S. exporters and financial institutions who depend on the Export-Import Bank in order to compete in world markets. The Bank's economic impact procedures have a direct impact on the effectiveness of the Bank in supporting U.S.-origin exports and fulfilling its fundamental mission under its statutory charter.

The Bank completed a comprehensive review of its economic impact procedures in September, 2001 and made important changes. In reauthorizing the Bank through FY 2006, the Congress took note of the Bank's 2001 revisions and effectively ratified the current procedures with only very specific and narrow exceptions.

Given the extensive revisions made in 2001 and the Congressional support for virtually all of those changes, the revision process now underway should be limited to those changes that are required to accommodate the specific statutory changes made in P.L. 107-189, the Bank's reauthorization legislation.

SUGGESTIONS FOR EXPANDED ANALYSES ARE A PRESCRIPTION FOR STALEMATE

During the Bank's September 24th public meeting, some comments were aimed at reopening the entire economic impact procedure. CEE and NFTC strongly oppose any such proposals and we urge the Bank to limit this process to the specific changes mandated by Congress. Moreover, the substance of what was suggested — applying the full economic impact analysis to all Ex-Im cases, to impose an entirely new procedure for assessing the direct and indirect employment of each case and providing special status for certain private interest groups to participate in such expanded reviews — is not contemplated in the Bank's charter, is unnecessary given the Bank's current employment impact analysis and would grant an inappropriate role to certain special interest groups.

If these suggestions were adopted, the Bank would be bound up in endless analysis, greatly delaying decisions on pending export transactions and damaging the competitiveness of U.S. exporters. Inasmuch as U.S. exporters face foreign competitors on every transaction, these delays inevitably would result in the loss of many export sales, with a direct loss of export-related jobs among American workers.

Further, the analytical resources necessary to carry out such suggestions would quickly overwhelm the Bank's staff and the staff of other agencies that now participate in economic analyses. The Bank would be paralyzed, case processing would slow to a halt and the Bank would be rendered useless to U.S. exporters. Such results would be directly contrary to the Bank's statutory charter.

The only beneficiaries of such recommendations would be the companies, banks and workers in other countries who would win the export sales that U.S. companies would lose while waiting for the Bank to struggle to complete lengthy economic impact analyses.

COMMENTS ON EX-IM BANK STAFF DISCUSSION PAPER

After reviewing the Bank staff's discussion paper, we have the following specific comments.

Item I. Antidumping and Countervailing Duty Orders and Section 201 Determinations

Issue 1: Changes to Bank procedures?

We agree with the staff's recommendation that no changes are needed regarding AD/CVD orders and Sec. 201 determinations. The Bank's current policies in this regard are fully consistent with statutory requirements.

Issue 3: How long is the prohibition on Ex-Im under an ITC injury determination?

We strongly recommend staff option 2, to track the period set by the President. If the President should not order any relief, then that should govern the Bank's implementation.

Issue 4: How to consider tied ITC votes?

We agree with the staff recommendation that the Bank should follow the President's decision on how to interpret the effect of any tied ITC vote.

Issue 5: How should the Bank interpret "substantially the same product"?

Four technical options are set forth. We are researching the implications of each of these options and currently do not have a specific recommendation, and will follow up with the Bank's staff soon.

II. Preliminary AD/CVD Determinations

Issue 1: Does the new statute require any changes in Bank procedures?

We disagree strongly with the staff's recommendation that all cases over $10 million be subject to notice and comment. There is no statutory requirement for expanding the notice and comment process to these cases. We strongly recommend retaining the procedure established in 2001 that applies both the $10 million threshhold and the 1 percent test.

III. Consideration of Investigations Under Title II of the 1974 Trade Act

Issue 1: Does the new statute require the Bank to modify its screens for Sec. 201 investigations?

We strongly recommend that the Bank retain the screens established in the 2001 revisions. This was an area of substantial consideration, consultation and deliberation by the Bank last year. No changes are required to accommodate the statutory amendments.

Further, we note that Title II investigations do not necessarily relate to situations of oversupply and therefore are not an appropriate indicator or screen.

IV. Exception

Issue 1: Should the Bank modify its standards when applying to trade measures?

We agree with the staff recommendation that no change is required to conform to the new statute.

Issue 2: Should the Bank have a comment period before acting on cases involving trade measures?

We agree with the staff recommendation that a 14-day comment period is appropriate. However we note that the statute does not require any comment period when the Bank invokes the exception provision under Sec. 2(e)(3). In fact, the statute clearly states that whenever the exception provision applies, the comment period under Sec. 2(e)(2)(C) does not apply.

IMPORTANCE OF THE EXCEPTION PROVISION

The exception provision of the Bank's charter, Sec. 2(e)(3), is both clear and significant. It provides that all of the economic impact provisions "shall not apply" whenever the Bank's Board finds that the benefits of a pending transaction, both to industry and to employment, are likely to outweigh any economic injury in the U.S.

It is important to note that in amending the economic impact provisions of the charter, Congress carefully and deliberately applied the exception provision to the new statutory provisions. In our view, this is a clear statement of policy that the Congress expects the Bank to weigh the benefits of all transactions against possible injury and to set aside all the limitations on financing whenever the export benefits outweigh any perceived injury, including when trade measures are relevant. This should be the fundamental principle underlying all of the Bank's economic impact procedures and all decisions made under these procedures.